

IN THE DISTRICT COURT OF BAUCHI STATE
(SMALL CLAIMS COURT)
HOLDEN AT BAUCHI

BEFORE HIS WORSHIP GARBA ABDULLAHI

SUIT NO SCC/BH/22/2023

BETWEEN

1. ALIYU MUSA

2. IBRAHIM MUSA CLAIMANTS

AND

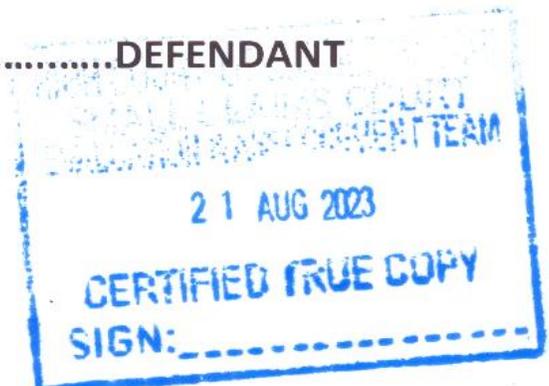
JAMLU AKA MAI CHARBIN BORKONO DEFENDANT

CLAIMANTS –PRESENT IN COURT speaks Hausa Language

DEFENDANT – Absent in court

Abdussalam Abdullahi – Affirmed to interpret

JUDGMENT DELIVERED ON 18/07/2023



This small claims action has been filed by the claimant vide forms SCA 2 AND SCA 3 dated 8th July 2023 and filed on the same date.

Wherein the claimants seeking for the following reliefs;

1. AN ORDER directing the defendant to the sum of N50,000.00 only to claimants being the remaining balance for the price of house gate made to the defendant
2. The cost of this action this action, sum of N5,500.00 only

On the date fixed for hearing Claimant was in court while defendant was not in court, it is in record that defendant was served with the writ and hearing notice by substituted means base on the application by the Claimants after all effort to serve

the defendant personally prove abortive as disclosed by affidavit of service deposed to by one Abdussalam Abdullahi a bailiff of this Hon. Court dated 24/7/2023. Trial commenced on 24/7/23 where the 1st claimant testified as CW 1 to the effect that, he made a house gate to the defendant at the cost of N140,000.00K only he paid N90,000.00k remaining outstanding balance of N50,000.00K only.

He further told this Hon. Court that they entered into said transaction with defendant on 17/11/2022 the defendant took the property (gate) since on 22/11/22 but he refuses to settled the remaining balance of N50,000.00k only up to date despite several demand

CW 2 Testify to the effect that they entered into transaction with the defendant to procure a house Gate for him at the cost of N140,000.00k only he paid N90,000.00k on 17/11/22 they completed their part, defendant took the property (Gate) on 22/11/22 but refuse to settled the remaining balance of N50,000.000K despite several demand, finally urged the court to enter judgment against the defendant.

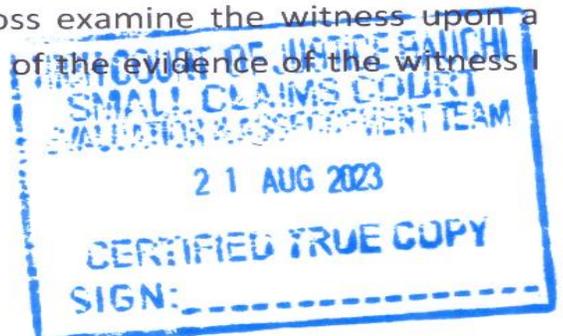
This court adjourned the case to 25/7/23 for cross examination/defense, on the said adjourned date, defendant was absent in court despite the hearing notice served on him by substituted means as evidence by affidavit of service deposed to by the bailiff of this court dated 25/7/23, hence the court upheld the application of the claimant for the right of the defendant be foreclose and the matter adjourned to 28/7/23 for Judgment

Having taken into consideration the evidence adduced by the claimants this Hon. Court formulate lone issue for determination thus

“whether the Claimants proof their case to the balance of probability “

The law is trite that claimant has a duty a duty to proof his case by preponderance of evidence, he can succeed by the strength of his case not the weakness of defense I refer myself to the case of OMOKOMOWO VS AUDU (1985) LPELR-469 (SC)

It is settled law that the effect of failure to cross examine the witness upon a particular matter is a tacit acceptance of a truth of the evidence of the witness I



refer myself to the case of OFORLETE VS STTE (2000) 12 NWLR(PT681) 415 AT 436 and AGBONIFO VS AIWEREOBO (1988)1 NWLR (PT681)

It is in record of this court that defendant has been served with the hearing notice to cross examine the evidence of the claimant, but he refuses, fail or neglect to do so, therefore it is my humble view that the evidence of the claimants been not cross examine by the defendant is amounted to admission and I so hold

Therefore, I resolved the lone issue for deamination in favor of the claimant, they proof his case to the balance of probability.

It is trite law that in awarding cost the courts are enjoy to look at the amount payable in institution of action, number of witness called, duration of the case and the monetary value at the time of incurring the expenses as posited by the appellate court in the case of ONABAJO VS EWETUGA (1993) 4 nwlr (pt288)445 at 460

On the whole I hereby enter judgment against the defendant, in favor of the claimant and grant all their reliefs as prayed.

This case is decided today being 28/7/23 there is right of appeal to High Court Bauchi within 14 days by the aggrieved party

